

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NEVADA DEPARTMENT OF
CORRECTIONS,

Plaintiff,

v.

RUSSELL COHEN, JIMMY EARL DOWNS,
TRAVERS A. GREENE, and PAUL
BROWNING,

Defendant.

03:07-cv-00266-LRH-RAM

ORDER

Before the court is Defendants Greene and Browning's motion for clarification (#127¹). Greene and Browning ask this court to clarify its October 30, 2008, order (#118) to indicate whether the Ninth Circuit's October 21, 2008, order acted as a remand of jurisdiction to this court. Because there has been some confusion as to the status of this case, the court grants the motion for clarification.

In its October 21, 2008, order, the Ninth Circuit indicates that before an appeal was filed in its court, a Federal Rule of Appellate Procedure 4(a)(4) motion was timely filed in this court. The Rule 4(a)(4) motion referenced by the Ninth Circuit is Defendant Downs' September 11, 2008,

¹Refers to the court's docket

1 Motion to Alter or Amendment Judgment (#103). In light of the Rule (4)(a)(4) motion, the Ninth
2 Circuit concluded that “[t]he notice of appeal is therefore ineffective until entry of the order
3 disposing of the last such motion outstanding. See Fed. R. App. 4(a)(4). Accordingly, the
4 proceedings in this court shall be held in abeyance pending the district court’s resolution of the
5 pending September 11, 2008 motion.”

6 This court construes the Ninth Circuit’s October 21, 2008, order as an expression that
7 Greene and Browning’s notice of appeal is not effective until this court rules on the pending
8 motion to alter or amendment judgment. See Fed. R. App. P. 4(a)(4)(B)(i). Therefore, in the
9 interim, jurisdiction remains in this court. See *United Nat’l Ins. Co. v. R&D Latex Corp.*, 242 F.3d
10 1102, 1109 (9th Cir. 2001) (“The notice of appeal . . . did not . . . divest the district court of
11 jurisdiction at the time it was filed because there was then a pending motion for reconsideration.”).

12 IT IS THEREFORE ORDERED that Defendants’ motion for clarification (#127) is
13 GRANTED. This court has jurisdiction over Defendants’ case pending decision on Defendant
14 Downs’ September 11, 2008 motion to alter or amend judgment.

15 IT IS SO ORDERED.

16 DATED this 17th day of February, 2009.



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19 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE